

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
Plaintiff,) 2:01-CR-0167-LRH-PAL
v.)
JULIO GUTIERREZ,) ORDER
Defendants.)

Before the court is defendant Julio Gutierrez's ("Gutierrez") motion for a downward departure on sentencing, Doc. #53.¹

On October 7, 2002, Gutierrez pled guilty to possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii). Doc. ##42, 43. On February 4, 2003, Gutierrez was sentenced to 168 months incarceration. Doc. #50.

Subsequently, Gutierrez filed the present motion seeking a four-point (4) downward departure on his original sentencing guideline calculation pursuant to the Department of Justice's fast-track program policy concerning illegal re-entry cases. *See Doc. #53.* Gutierrez contends that he is entitled to the four-point downward departure because he is an illegal immigrant. *Id.*

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¹ Refers to the court's docket number.

The court has reviewed the documents and pleadings on file in this matter and finds that Gutierrez is not entitled to a four-point downward departure on his sentencing calculations. The DOJ's fast-track program applies only to illegal reentry cases under 8 U.S.C. § 1326. Here, Gutierrez pled guilty to possession with intent to distribute, a completely separate offense, and one to which the fast-track program does not apply. Accordingly, the court shall deny Gutierrez's motion for a downward departure.

IT IS THEREFORE ORDERED that defendant's motion for a downward departure (Doc. #53) is DENIED.

IT IS SO ORDERED.

DATED this 16th day of October, 2012.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE